

PRESS RELEASE

FOR IMMEDIATE RELEASE: THURSDAY 18 FEBRUARY 2021

COURT OF APPEAL UPHOLDS HIGH COURT DECISION THAT HOME OFFICE £1,000 FEE FOR CHILDREN TO REGISTER AS BRITISH CITIZENS IS UNLAWFUL

Court rules that Home Office failed to assess and consider the impact of this fee on children and their rights

Lawyers and campaigners again urge Government to bring its practice of “blocking” children’s citizenship rights to an immediate end

The Court of Appeal has today upheld the ruling of the High Court that the £1,012 fee the Home Office charges children to register as a British citizen is unlawful.

This landmark case, brought by the Project for the Registration of Children as British Citizens (PRCBC) and O (a child), has revealed the dreadful impact of this fee upon children. In 2019, the High Court found a “*mass of evidence*” showing that the fee prevents many children from registering their British citizenship, leaving them feeling “*alienated, excluded, isolated, “second-best”, insecure and not fully assimilated into the culture and social fabric of the UK.*”

The Home Office did not challenge these findings; and the Court of Appeal added that for children like O, “*one of three children of a single parent on state benefits, it is difficult to see how the fee could be afforded at all.*”

The current administrative processing cost of a child’s registration as a British citizen is only £372. The Home Office uses the remaining £640 profit to cross-subsidise the immigration system.

Today’s judgment again requires the Home Office to reconsider the fee and ensure that children’s best interests are taken fully into account in doing so. The courts have made clear that where a child has a right to British citizenship it will generally be in the child’s best interests to be registered as British – something the Home Office continues to fail to recognise and act upon.

Responding to the judgment, O, who is now 13 years old, said:

“I was born in this country and have lived here all my life.

“I am no less British than any of my friends. It makes me upset to think they or other people might treat me as different if they knew I don’t have a British passport.

“I have a right to citizenship and have been since I was 10. I do not understand why I continue to be excluded by this huge fee.”

Solange Valdez-Symonds, solicitor for O, said:

“The Government’s priority ought to be to ensure every child with rights to British citizenship can have this confirmed – with all the security, opportunity and sense of belonging that comes with that.

“I continue to be deeply disturbed that thousands of children are blocked by this huge fee from registering their right to British citizenship, given to them by an Act of Parliament.

“This must stop.”

Today’s Court of Appeal ruling

The Court of Appeal has today ruled on an appeal by the Home Office and a cross appeal by PRCBC and O.

The Home Office appeal was against the High Court’s ruling that the department had failed to discharge its duty to assess the best interests of children and give primary consideration to these interests in setting the fee.

The Home Office again sought to rely upon debates in Parliament as evidence that the Home Office had considered children’s best interests. It needed to attempt this because its witness statement before the High Court did not show it had considered children’s best interests.

The Court of Appeal received submissions from the Speaker of the House of Commons and the Clerk of the Parliaments that it was not permissible for the Home Office to rely on the debates in this way. The Court of Appeal accepted these submissions and rejected the Home Office appeal. [See Note 7 below]

PRCBC and O cross appealed on the basis that the fee – in addition to being unlawful because of the failure to consider children’s best interests – was unlawful because its effect was to deprive many children of their statutory right to British citizenship. The High Court had found this argument to be “*powerful*” but decided it was bound to reject it because of a previous decision of the Court of Appeal.

Today, the Court of Appeal decided it too is bound by that previous decision, but two of the judges indicated that were it not for that previous decision they would see “*considerable force*” in the argument. PRCBC and O have sought permission to appeal to the Supreme Court.

Carol Bohmer, Chair of the Project for the Registration of Children as British Citizens (PRCBC) said:

“PRCBC is determined to ensure that all children with rights to British citizenship are able to exercise these rights.

“We are delighted the courts have yet again held this scandalously high fee, which prevents many children registering with the citizenship to which they are entitled, is unlawful.

“But children are still being excluded – by this fee and by many other barriers, which the Government should be doing all it can to remove; and we will continue in our mission to make that happen so no one is in future forced to grow up in the UK suffering the alienation and isolation that is currently the experience of so many young people.”

Maria Patsalos, Partner at Mishcon de Reya who acted for PRCBC said:

“This decision is another positive step in enabling children to access their rights as British citizens.

“It is a decision to celebrate, but we remain concerned that with each passing day of the Home Office waiting to rectify this, some children are losing the right to register as British upon turning 18.

“The Home Office should look now to amend its fees and act swiftly to ensure wealth is not a requirement for children to access their citizenship rights.”

PRCBC was represented pro bono by Mishcon de Reya solicitors (Maria Patsalos, Lucy Humphreys and Adis Sehic) instructing pro bono Richard Drabble QC of Landmark Chambers, Miranda Butler of Garden Court Chambers and Isabelle Buchanan of Blackstone Chambers. O was represented by Solange Valdez-Symonds (Cardinal Hume Centre) instructing Richard Drabble QC and Admas Habteslasie of Landmark Chambers and Jason Pobjoy of Blackstone Chambers.

Amnesty International UK remains concerned at the ongoing deprivation of children’s rights to British citizenship and attended the hearing on 6 and 7 October 2020; and continues to support PRCBC in its work to secure the British citizenship rights of thousands of children and young people currently excluded by this fee and other barriers to their registration of citizenship. Together, PRCBC and Amnesty continue to call upon the Home Secretary to:

- Remove any element of the registration fee over and above the actual cost of administration
- Exempt the entire fee in the case of children in local authority care
- Introduce a waiver of the fee in the case of any child who is unable to afford the administrative cost of registration

Steve Valdez-Symonds, Refugee and Migrant Rights Programme Director at Amnesty International UK said:

“It is plainly unjust that any child should effectively be taxed out of their right to British citizenship by this huge fee.

“When making the law on British citizenship, Parliament made clear that citizenship was the right of all children who grow up in this country.

“That thousands of children – including many children born in this country – must formally register that right is being used and abused by the Home Office to raise funds; and this must end.”

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Notes to Editors:

1. The claim referred to as *R (PRCBC & O) v Secretary of State for the Home Department* was heard in the Court of Appeal by Lord Justice David Richards, Lord Justice Singh and Lady Justice Nicola Davies on 6 and 7 October 2020.
2. The main rights of children to register as British citizens are summarised in PRCBC leaflets available online here: <https://prcbc.org/information-leaflets/>
3. The £1,012 fee for children to register as British citizens is set by the Home Secretary by regulations. The Court has upheld the decision of the High Court that the current regulations – the Immigration and Nationality (Fees) Regulations 2018, SI 2018/330 – and their predecessor are unlawful insofar as they set this fee.
4. Academic estimates have indicated that over 100,000 children, most of whom were born in the UK, may be affected by this fee. More information is available in a detailed joint briefing of PRCBC and Amnesty International UK which can be found online here: https://prcbc.files.wordpress.com/2019/03/fees_briefing_revised_march_2019.pdf
5. Children born in the UK are not born British citizens unless one or other of their parents is themselves a British citizen or settled in the UK. People with indefinite leave to enter or remain are settled for the purposes of UK law. Children born in the UK who are not born British citizens become entitled to that citizenship if they have lived in the UK for the first ten years of their life or if, while they are children, one or other of their parents becomes a British citizen or settled.
6. Other children growing up in the UK, particularly where they have been brought to the UK at a young age, may be registered as British citizens while they are still children.
7. PRCBC and O succeeded before the High Court on their argument that the Home Secretary failed to assess and give effect to children’s best interests when setting this fee. That judgment is [R \(PRCBC & Ors\) v Secretary of State](#)

[for the Home Department \[2019\] EWHC 3536 \(Admin\)](#). The Home Secretary appealed to the Court of Appeal against that. As she had done before the High Court, the Home Secretary sought to persuade the Court of Appeal that because PRCBC, Amnesty International UK and several parliamentarians had repeatedly drawn attention to this failure, this should be enough for the court to conclude that the Home Secretary must have considered the matter. The Court of Appeal invited and received submissions from the Speaker of the House of Commons and the Clerk of the Parliaments. They submitted that it was not appropriate for the Home Secretary to seek to rely on debates in Parliament in this way; and the court agreed. The evidence the Home Secretary had provided to the High Court did not show she had considered the best interests of children which she was required to consider by section 55 of the Borders, Citizenship and Immigration Act 2009.

8. The previous decision of the Court of Appeal, by which it and the High Court have now each considered themselves to be bound is [R \(Williams\) v Secretary of State for the Home Department \[2017\] EWCA Civ 98](#). In view of that earlier decision, PRCBC and O have sought permission to appeal to the Supreme Court to show that the fee is also unlawful for rendering nugatory the statutory right to British citizenship.